

Travis N. Barrick, SBN 9257  
GALLIAN WELKER  
& BECKSTROM, LC  
540 E. St. Louis Avenue  
Las Vegas, Nevada 89104  
Telephone: (702) 892-3500  
Facsimile: (702) 386-1946  
[tbarrick@vegascase.com](mailto:tbarrick@vegascase.com)  
Attorneys for Plaintiff Thomas

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CASSANDRA ANN THOMAS, an  
individual;

Plaintiffs,

v.

JAMES G. COX, et al.;

Defendants.

Case No.: 2:16-cv-80-JAD-CWH

**PLAINTIFF'S MOTION TO  
EXTEND TIME FOR SERVICE ON  
DEFENDANTS COX, HOLMES  
AND KAYBATAY**

**(FIRST REQUEST)**

Pursuant to FRCP 4(m), plaintiff, Cassandra Thomas, through her attorneys of the law firm GALLIAN WELKER & BECKSTROM, LC, hereby submits her Motion to Extend Time for Service of the 1<sup>st</sup> Amended Complaint on Defendants Cox, Holmes and Kaybatay. This Motion is based upon the papers and pleadings on file herein, the Declaration of Travis N. Barrick below, and such oral argument that the Court chooses to entertain at the hearing thereon, if any.

**I. BACKGROUND FACTS.**

Ms. Thomas is currently incarcerated at the NDOC Florence McClure Women's Correctional Center ("FMWCC").

On May 23, 2016, Ms. Thomas filed her *pro se* 1<sup>st</sup> Amended Complaint (ECF

1 No. 11). Thereafter, she attempted service on certain defendants by way of US Mail.

2 On November 28, 2016, Mr. Barrick filed his Notice of Appearance (ECF No.  
3 26).

4 On December 5, 2016, the Court issued its Notice of Intent to Dismiss (ECF  
5 No. 28), giving Ms. Thomas until January 4, 2017 to accomplish service or the case  
6 would be dismissed.

7  
8 On December 5, 2016, Mr. Barrick prepared and filed proposed summons to  
9 be issued (ECF No. 29), which were subsequently issued by the Clerk (ECF No. 30).  
10 Thereafter, Mr. Barrick delivered the Summons to Legal Wings to be served on the  
11 various Defendants, at both the NDOC and the Attorney General's Office in Carson  
12 City.  
13

14 On December 20, 2016, Legal Wings accomplished service on Defendants  
15 Aranas, Clark, Cox, Faulkner, Gentry, Holmes and Kaybatay at the Attorney  
16 General's Office **and** Aranas, Clark, Faulkner and Gentry at the offices of the  
17 NDOC, which refused service of process on Cox, Holmes and Kaybatay.  
18

19 On January 5, 2017, Legal Wings delivered to Mr. Barrick the Affidavits of  
20 service on those Defendants, which were filed the same day (ECF No. 32).

21 Legal Wings also delivered Affidavits of Attempted Service on Cox, Holmes  
22 and Kaybatay. The purpose of this Motion is to extend the time to accomplish  
23 service on Cox, Holmes and Kaybatay, the Defendants for whom NDOC refused to  
24 accept service.  
25

## 26 **II. ARGUMENT.**

27 FRCP 4(m) provides that "if the plaintiff shows good cause for the failure [to  
28 accomplish service in a timely fashion], the Court must extend the time for service

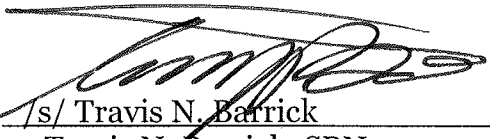
1 for an appropriate period.”

2 Here, Ms. Thomas has shown good cause because the NDOC refused to  
3 accept service for former NDOC employees Cox, Holmes and Kaybatay, as they are  
4 entitled to do.

5 However, in the event that Mr. Barrick and counsel at the Attorney  
6 General’s Office are unable to agree to waivers of service, then Ms. Thomas must  
7 take reasonable steps to locate those individuals to accomplish personal service.  
8

9 For this reason, Ms. Thomas requests an additional 60 days to accomplish  
10 service on Defendants Cox, Holmes and Kaybatay.

11 DATED this 5<sup>th</sup> day of January, 2017.

12   
13 By: /s/ Travis N. Barrick  
14 Travis N. Barrick, SBN 9257  
15 GALLIAN WELKER  
16 & BECKSTROM, LC  
Attorneys for Cassandra Thomas

17 **DECLARATION OF TRAVIS N. BARRICK**

18 **Thomas v. Cox, 2:16-cv-80-JAD-CWH**

19 STATE OF NEVADA           )  
20                                        )       ss:  
21 COUNTY OF CLARK         )

22 I, Travis N. Barrick, having been first duly sworn on oath, states as follows  
23 under penalty of perjury:

24 1. I am a resident of Clark County, Nevada, over the age of 18 years old and  
25 am counsel of record for the Plaintiff in this matter.

26 2. On December 5, 2016, I prepared and filed proposed summons to be issued  
27 (ECF No. 29), which were subsequently issued by the Clerk (ECF No. 30).  
28


1 Thereafter, I delivered the Summons to Legal Wings to be served on the various  
2 Defendants, at both the NDOC and the Attorney General's Office in Carson City.

3 3. On January 5, 2017, Legal Wings delivered to my office the Affidavits of  
4 service on some of the Defendants, which were filed the same day (ECF No. 32).

5 4. On January 5, 2017, Legal Wings also delivered to my office Affidavits of  
6 Attempted Service on Defendants Cox, Holmes and Kaybatay at the NDOC. Those  
7 Affidavits<sup>1</sup> stated that the NDOC would not accept service on Cox and Holmes  
8 because they were no longer employed by the NDOC and because Dulce Kaybatay  
9 has never been employed by the NDOC.  
10

11 5. Further, Declarant sayeth not.

12 DATED this 5<sup>th</sup> day of January, 2017

13  
14   
15 /s/ Travis N. Barrick  
16 Travis N. Barrick

17 **ORDER**

18 For good cause appearing, it is hereby ordered that the time for Plaintiff to  
19 accomplish service on Defendants Cox, Holmes and Kaybatay is hereby extended until  
20 March 4, 2017 \_\_\_\_\_.

21  
22 Dated this 6<sup>th</sup> day of January, 2017.

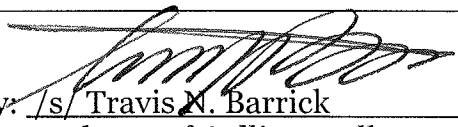
23  
24   
25 \_\_\_\_\_  
26 DISTRICT COURT MAGISTRATE  
27  
28

<sup>1</sup> True and correct copies of those Affidavits are attached as Exhibit 1.

**Certificate of Service by CM/ECF**

I hereby certify that on the 5<sup>th</sup> day of January, 201, I served the above and foregoing Motion to Extend the time for Service, by filing in the CM/ECF system and by US Mail, postage prepaid, upon the following:

Adam Laxalt Attorney General Bureau of Litigation, Public Safety Division 555 E. Washington Avenue, St. 3900 Las Vegas, NV 89101 Attorney for Defendants	
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By: /s/ Travis N. Barrick  
An employee of Gallian Welker &  
Beckstrom, LC

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**Thomas v. Cox, 2:16-cv-80-JAD-CWH**  
**Exhibit 1**  
**Affidavits of Attempted Service**

-1-

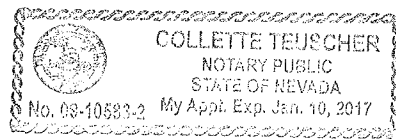
1           4.       That affiant on the basis of the foregoing information was unable to personally serve  
2 the Defendant, James G. Cox, Director NDOC, in Carson City, Nevada.

3                   Further your affiant saith naught.

4  
5                   *Norma Holland Dunham*  
6                   Norma Holland-Dunham  
7                   Registered Work Card #R-061612

8                   Subscribed and Sworn to Before me  
9                   this 21 day of December, 2016.

10                  *Collette Teuscher*  
11                  Notary Public in and for said  
12                  County and State



LEGAL WINGS, INC.  
PROCESS LICENSE #389  
LAS VEGAS, NV  
(702)384-0305



LEGAL WINGS, INC.  
PROCESS LICENSE #389  
LAS VEGAS, NV  
(702)384-0305

1 Cassandra Thomas  
2 FMWCC 4370 Smiley Rd  
3 Las Vegas, NV 89115  
4 1021020  
5 Prison Number

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

6 Cassandra Thomas ) CASE NO. 2:16-cv-00080-JAD-CWH  
7 )  
8 Plaintiff, )  
9 vs. )  
10 James G. Cox – Director NDOC; et al., )  
11 Defendants. )

AFFIDAVIT OF ATTEMPTED SERVICE RE: JAMES HOLMES, D.O.

13 State of Nevada )  
14 ) ss.  
15 County of Carson City )

16 Norma Holland Dunham, first being duly sworn deposes and says:

17 1. That affiant is and was at all times mentioned herein a citizen of the United States,  
18 over 18 years of age, not a party to, nor interested in the within action, and licensed to serve civil  
19 process under Nevada license number 389.

20 2. That affiant received the within Summons in a Civil Action; First Amended  
21 Complaint, Civil Rights Complaint Pursuant to 42 U.S.C. 1983, Jury Demand Trial on December  
22 19, 2016.

23 3. That affiant attempted to personally serve a copy of said documents on the  
24 Defendant, James Holmes, D.O., by serving the Nevada Department of Corrections, at 5500 Snyder  
25 Ave., Bldg. 17, Carson City, Nevada 89701, on December 20, 2016 at 10:45 a.m. and spoke with  
26 Janet Schull, Human Resources Analyst, who stated that the Defendant is no longer employed there  
27 and they cannot accept service.  
28

• \* \* \*  
• \* \* \*  
• \* \* \*  
• \* \* \*

**Further your affiant saith naught.**

Collette Treese  
Notary Public in and for said  
County and State



Cassandra Thomas  
 FMWCC 4370 Smiley Rd  
 Las Vegas, NV 89115  
 1021020  
 Prison Number

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

Cassandra Thomas

Plaintiff,

vs.

James G. Cox – Director NDOC; et al.,

Defendants.

) CASE NO. 2:16-cv-00080-JAD-CWH

)

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AFFIDAVIT OF ATTEMPTED SERVICE RE: DULCE KAYBATAY, N.P.

State of Nevada

)

) ss.

County of Carson City

)

Norma Holland Dunham, first being duly sworn deposes and says:

1. That affiant is and was at all times mentioned herein a citizen of the United States, over 18 years of age, not a party to, nor interested in the within action, and licensed to serve civil process under Nevada license number 389.

2. That affiant received the within Summons in a Civil Action; First Amended Complaint, Civil Rights Complaint Pursuant to 42 U.S.C. 1983, Jury Demand Trial on December 19, 2016.

3. That affiant attempted to personally serve a copy of said documents on the Defendant, Dulce Kaybatay, N.P., by serving the Nevada Department of Corrections, at 5500 Snyder Ave., Bldg. 17, Carson City, Nevada 89701, on December 20, 2016 at 10:45 a.m. and spoke with Janet Schull, Human Resources Analyst, who stated that the Defendant has never been employed there and they cannot accept service.

\* \* \* \*

\* \* \* \*

\* \* \* \*

\* \* \* \*

LEGAL WINGS, INC.  
 PROCESS LICENSE #389  
 LAS VEGAS, NV  
 (702)384-0305

**Further your affiant saith naught.**

Collette T. Kessler  
Notary Public in and for said  
County and State

